

**Amendments to the Drawings:**

The attached Replacement Sheets do not include substantive changes to the original drawings, but instead include revisions intended to place the drawings in better condition to meet the formal requirements of the Patent Office.

Attachments: Fourteen (14) Replacement Sheets.

### Remarks

This paper is filed in response to the Office Action mailed December 19, 2006, in which claims 1-112 were pending in the application, of which claims 99-112 were withdrawn from consideration. Claims 1-98 stand rejected. By this paper, claims 1, 38, 58, 82, 83, 88, 92-94, and 96 have been amended.

Claims 1-24, 26-74, 76-94, and 96 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,703,751 issued to Pohl ("Pohl"). Claims 25, 75, 95, and 97 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pohl in view of U.S. Patent No. 5,122,144 issued to Bert et al. ("Bert"). For at least the reasons set forth below, Applicants submit that each of the pending claims is patentably distinct from the cited prior art. Reconsideration is therefore respectfully requested.

### Drawings

The Examiner objected to the drawings as unclear for proper examination. In order to remedy these objections, Applicants have provided herewith fourteen (14) Replacement Sheets, each of which includes all of the figures as they appeared on the original drawing sheets.

### Examiner Interview Summary

Applicants wish to express sincere appreciation for the interview granted by Examiner Swiger and conducted on March 15, 2007. During the interview, the deficiencies of the cited prior art references were discussed, as outlined below.

As discussed during the interview, the cited prior art, whether considered individually or in combination, fails to disclose or suggest “a cut guide member releasably secured directly to the second member such that the cut guide member and the second member move together about the pivot of the first member when said second member is selectively released from said first member,” as recited in independent claim 1. In fact, the cutting plate 18 of Pohl, which the Examiner identifies as the “cut guide,” and the reference bar 20, which the Examiner identifies as the “second member,” are not releasably secured to one another at all, let alone in such a way as to move together about a pivot of the first member (identified by the Examiner as support plate 36). Similar limitations are recited in independent claims 38, 92, 93, and 96, which likewise are not taught or suggest by the cited prior art.

Independent claim 58 is also patentably distinct from the cited art. To illustrate, the cited prior art fails to disclose or suggest a cut guide member that is configured to be selectively adjusted in a translational manner with respect to the support member and the positioning member so as to line up at least one cutting guide in a new cutting position relative to the bone while at least a portion of the device is anchored to the bone. The device of Pohl allows for rotational adjustment, by virtue of pivoting about pivot axis 44, but it does not provide for translational adjustment with respect to the other members so as to re-align the cutting guide in a new cutting position. Similarly, Pohl’s “cutting plate 18” is not permitted to move in a translational manner with respect to either of the other members of the device “so as to line up at least one cutting guide in a new cutting position relative to the bone,” as recited in independent claims 82, 83, 88, and 94.

Independent claim 95 is patentably distinct for other reasons. It recites a cut guide member “having a recessed surface and a sidewall defining a recessed area, said recessed area being dimensioned for receiving therein at least a portion of said support member and said positioning member such that at least a portion of said support member and at least a portion of said positioning member contacts at least one of said recessed surface and said sidewall.” The Examiner asserts that this limitation is disclosed in Bert. Bert does disclose a recessed area. However, the recessed area of Bert is not configured or dimensioned for receiving a portion of another piece or member of the device, let alone for receiving a portion of a support member *and* a positioning member, as required by the language of claim 95. Instead, the recessed area of Bert is configured and dimensioned for receiving a portion of the femoral bone, as shown in FIG. 17 of Bert.

There are also several clear distinctions between the limitations of claim 97 and the cited prior art. For example, the cited art fails to disclose or suggest a positioning member “comprising at least one protruding wall, the at least one protruding wall extending outwardly from the second side of the positioning member in an orthogonal manner, wherein the at least one protruding wall has a substantially rounded configuration such that the at least one protruding wall interacts with and pivots around one of the first end and the second end of the support member.” In addition, the cited art does not include a cut guide member “comprising a translation area defined by an anterior border, a posterior border, and at least one wall surface that is raised with respect to [a] recessed surface.” Finally, cited art fails to disclose or suggest a “translational adjustment member,” the loosening of which “releases the

cut guide member from the positioning member such that the cut guide member is selectively translated with respect to the securing members independent from the support member and the positioning member.” In fact, there is no adjustment member releasably connecting the cutting plate of Pohl to the reference bar at all, let alone one that, upon release, allows the cutting plate to be selectively translated independent from the support plate and the reference bar.

### Conclusion

In light of the preceding remarks, Applicants submit that each of the pending claims is patentably distinct over the cited references, alone or in combination. A Notice of Allowance is respectfully requested. Please contact Applicants' undersigned attorney in the event that any remaining impediment to the prompt allowance of this application is found, which could be clarified by a telephonic interview, or which is susceptible to being overcome by means of an Examiner's Amendment.

DATED this 13<sup>TH</sup> day of April, 2007.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Matt" followed by a stylized surname.

Matthew D. Thayne  
Registration No. 52,280  
Customer 32642

One Utah Center  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111  
(801) 578-6924  
(801) 578-6999